

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED
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U.S. DISTRICT COURT
N.D. OF ALABAMA
AJW

UNITED STATES OF AMERICA,)
)
v.)
)
RICHARD M. SCRUSHY,)
)
Defendant.)

Case No. CR-03-BE-0530-S

**EX PARTE MOTION OF THE UNITED STATES
TO MODIFY TERMS OF SEARCH WARRANT**

Comes now the United States of America, by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama, and James D. Ingram, Assistant United States Attorney for this district, and moves this Court to modify the terms of search warrant issued on November 3, 2003, for the residence and real property at the following location:

- a. Residence and compound located at 2406 Longleaf Street, Birmingham, Alabama 35243, including adjoining real properties located at 2410 Longleaf Street, 2320 Longleaf Way, and 2300 Marin Drive, Birmingham, Alabama, together with all outbuildings, improvements, fixtures, and appurtenances thereon.

As grounds therefor, the Government states as follows:

1. That on November 4, 2003, at approximately 9:00 a.m., federal law enforcement agents began execution of the above-referenced search warrant and accompanying writ of entry for the purpose of documenting the location and condition of various real and personal properties that are subject to forfeiture to the United States.
2. That the search warrant did not specify the time period during which the search and inventory must be completed.

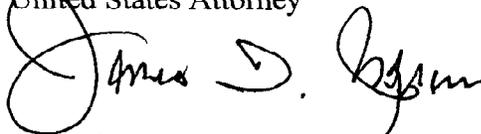
3. The Government has been working diligently today in an effort to complete its assignment; however, it appears, because of the size of the location and that it may require until approximately 12:00 midnight tonight (November 4, 2003). The affidavit of Special Agent Richard Waller, Federal Bureau of Investigation, is submitted herewith in support of the Government's motion.

4. The government notes that, as a matter of case law, several circuits have held as valid searches that begin during the day even though they continue into the night. United States v. Squillacote, 221 F.3d 542, 556 (4th Cir. 2000); United States v. Young, 877 F.2d 1099, 1104-05 (1st Cir. 1989); United States v. Joseph, 278 F.2d 504 (3rd Cir. 1960); United States v. Burgard, 551 F.2d 190, 193 (8th Cir. 1977).

Wherefore, for the foregoing reasons, the Government requests this Court to modify the present search warrant to permit federal agents to finish their assignment tonight in order to avoid having to return the next day and cause any further disruption to the residents of said property.

Respectfully submitted this 4th day of November, 2003, at 4:05 p.m..

ALICE H. MARTIN
United States Attorney



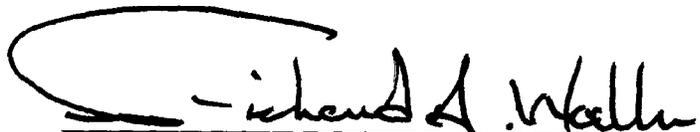
JAMES D. INGRAM
Assistant United States Attorney
1801 Fourth Avenue North
Birmingham, Alabama 35203
(205) 244-2130

DECLARATION OF RICHARD A. WALLER

My name is Richard A. Waller, and I am a special agent with the Federal Bureau of Investigation (FBI); I am one of the case agents assigned to the investigation of Richard M. Scrushy. In connection with the execution of the search warrant of the residence and real property, located at 2406 Longleaf Street, Birmingham, Alabama, on November 4, 2003, I have been monitoring the efforts of agents who have been on site. Based on their regular updates, received by telephone, I am aware that it does not appear possible for agents to complete their work at that location by 10:00 p.m., tonight. However, I have been informed that this work can be completed by approximately 12:00 midnight. Accordingly, it is necessary to insure that additional time is allowed for completion of the work in order to avoid making additional applications for search warrants and writs of entry to finish the task of identifying and preparing an inventory of properties subject to forfeiture.

I declare under penalty of perjury as provided by 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this the 4th day of November, 2003.

A handwritten signature in black ink that reads "Richard A. Waller". The signature is written in a cursive style with a large, sweeping initial "R" that loops back over the rest of the name.

RICHARD A. WALLER
Special Agent
Federal Bureau of Investigation